In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 268

DAGMAR C. JOSEPH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (R. 256–257; Pet. App. 19–20) is reported at 343 F. 2d 755.

JURISDICTION

The judgment of the court of appeals was entered on April 6, 1965 (R. 258). A petition for rehearing (R. 259–263) was denied on May 21, 1965 (R. 264; Pet. App. 21). The petition for a writ of certiorari was filed on June 18, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the court abused its discretion in denying a continuance.

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2. Whether the court erred in refusing to order a more extensive bill of particulars than that furnished by the government.

STATEMENT

Petitioner was convicted in the United States District Court for the District of Louisiana of the transportation in interstate commerce of a falsely altered check in violation of 18 U.S.C. 2314 (R. 2–3, 19–20). She was given a tentative maximum sentence pursuant to 18 U.S.C. 4208(b) (R. 245, 249–250) and noted an appeal before the final sentence was determined. On appeal (R. 253) the conviction was affirmed (R. 258).

1. The original complaint was filed on June 4, 1962 (Pet. App. 20). On January 14, 1964, the original indictment was dismissed, a superseding indictment was filed, and the case was set for trial on January 21, 1964 (R. 14). On January 14, 1964, petitioner filed a motion for a bill of particulars asking for the means by which the check was transported in interstate commerce (R. 11–13). At a hearing on January 15, 1964, the government attorney answered the motion by alleging that "the check was transported and caused to be transported in interstate commerce in that it was deposited by the defendant in a New Orleans bank for collection through ordinary banking channels" (R. 5, 6, 15). This colloquy occurred (R. 6–7):

> THE COURT: What is it you want? You want to know what train it went by?
>
> Mr. DOWLING: (Petitioner's counsel): No, sir, I do not.

> The COURT: It went through ordinary banking channels. It would be easy enough to have the bank send their checks.

The court overruled the motion for a further bill of particulars (R. 15).

After a reminder that the case was set for trial on Tuesday, January 21, 1965 (R. 7) petitioner asked for a continuance to consult an expert in Baton Rouge (R. 8–9). Government counsel pointed out that he had made all documents and samples available and that they had been examined by two experts while petitioner had other counsel; that counsel has had the benefit of those examinations, one by a local man, and one by a man who came here from Houston. The court denied the motion for a continuance (R. 9, 10).

2. The evidence showed that petitioner, an employee of Geismar & Company in New Orleans, Louisiana, opened the company's mail as part of her duties. Several other employees also had access to the mail (R. 53–55, 70–71, 186–187). A check dated August 3, 1961 for $3911.55 drawn by National Gypsum Company in Buffalo, New York, was sent to Geismar & Company. When the check was paid and charged to National Gypsum's account by its Buffalo bank the "i" had been erased and changed to "l" so that the payee's name read "Gelsmar" instead of "Geismar" (R. 31–36, 154–155). On August 15, 1961 a woman opened a partnership checking account in a New Orleans Bank in the name of Gelsmar & Company, the signature card for which was signed in the names of Ben Gelsmar and Connie Murray (R. 79–82). The altered National Gypsum check for

$3911.55 (Ex. G–5) was deposited in this account on August 16, 1961 (R. 84–85). A short time after this an unidentified woman opened accounts in other banks in the names Mrs. William McLaughlin and Ruth Ryan (R. 93, 98, 100–101, 103–104). Withdrawal checks from the Gelsmar account were deposited in the McLaughlin and Ryan accounts (R. 88, 94, 87, 89, 102). All of the bank accounts were closed out before the end of August 1961 (R. 87–88, 94, 102).

An F.B.I. handwriting expert compared petitioner's handwriting specimens (Ex. G–20, G–21) with various bank card signatures and check endorsements in the names of Connie Murray, Ruth Ryan, and William McLaughlin, and found that they had been made by the same person (R. 134–154).

ARGUMENT

1. A trial court's ruling on the question of a continuance is one within its discretion and will not be upset in the absence of abuse of that discretion. See *Nilva* v. *United States,* 352 U.S. 385, 395; *Hardy* v. *United States,* 186 U.S. 224, 227. Here the court did not abuse its discretion in refusing a continuance. The case was not tried until about a year and a half after the complaint had been filed, and during this time petitioner's two previous counsel (see R. 248) had two experts examine the questioned documents and samples of petitioner's handwriting which the government had made available. Petitioner's trial counsel had access to these previous examinations. There was no showing that Mr. Bernard, the expert living nearby at Baton Rouge, Louisiana, whom peti-

tioner's counsel wanted as a witness, could not have been subpoenaed within the six-day period before trial, nor was there any affidavit as to his intended testimony showing that it would probably have affected the result of the trial.

The government's expert testified that he received the handwriting specimens of Strobel, another employee in the Geismar office, on the Saturday before the trial and that they did not correspond with the questioned documents and did not resemble petitioner's handwriting (R. 158–159). Petitioner now argues that she should have had time to counter this testimony. No continuance was sought for this purpose and there was no serious defense contention that Strobel was possibly the guilty party.

2. There was no error in the court's refusal to order a more extensive bill of particulars than that furnished by the government. The petitioner now suggests that she requested information revealing the bank accounts in which the proceeds of the altered check were deposited so that she could prepare her defense (Pet. 7–8). But petitioner made no such request. She asked only for more specific information as to the means by which the checks were transported from Louisiana to New York—whether it was carried in person, or by mail, or by express, or by some agent. The government answered by stating that this was accomplished by depositing a check drawn on a New York bank in a New Orleans bank for collection through ordinary banking channels. Petitioner has made no showing as to how she was

prejudiced by denial of a more detailed bill of particulars. Since it is clear that denial of her request in no way prevented her from discovering the handwriting samples that would be used against her, the court acted well within its discretion in refusing to require a detailed explanation of the method of carriage of the check in interstate commerce or of the "agents" who transported the check. *Wong Tai* v. *United States,* 273 U.S. 77, 82; *Medrano* v. *United States,* 285 F. 2d 23 (C.A. 9), certiorari denied, 366 U.S. 968.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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